UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/695,200 | 10/28/2003 | Mark E. Zachman | SPC 0378 IA/40719.773 | 4518 |

7590 07/25/2006

DINSMORE & SHOHL LLP
One Dayton Centre
Suite 500
Dayton, OH 45402-2023

| EXAMINER | |
|---|---|
| ADDIE, RAYMOND W | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3671 | |

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 10/695,200
Filing Date: October 28, 2003
Appellant(s): ZACHMAN ET AL.



William Jividen
For Appellant

**EXAMINER'S ANSWER**

Responsive to the Reply Brief filed on 4/17/06, a supplemental Examiner's Answer is set forth below:

***Response to Arguments***

Appellant argues against the objection to claim 2, stating on page 2, lines 15-18 that "Clearly, as the gravity-based slope sensor is provided to the screed head, the desired grade is limited to the various different "desired grades" that can be measured by the gravity based sensor provided to the screed head".

To which the Examiner concurs.

However, Appellant is reminded that Claim 2 requires actual method steps to be performed, such that one of ordinary skill in the art, can use the invention as claimed.

To that affect, Appellant's argument, recited above, clearly sets forth the undeniable fact that, the gravity based slope sensor must be provided on the screed head and only those grades that can be measured by positioning the screed head on the "desired grade" can be measured using the method as claimed.

Appellant is further reminded, the method step(s) of Claim 2, as presented, do not require the use of the screed head in the measuring step as argued.

Further, the intent of the objection to claim 2, was to request Appellant to clarify the limitation, as clearly as argued, in Appellant's reply brief of 4/17/06.

As currently written Claim 2 does not require the use of the screed head for measuring a "desired grade". Claim 2 only requires the use of the gravity based cross slope sensor to measure a desired grade.

As disclosed, the only slope that can be measured by the gravity based cross slope sensor, is that of the cross slope sensor itself, and by virtue of its connection

directly to the screed head; the cross slope of the screed head as well. Whether the screed head is co-parallel with a "desired grade" or not, is conspicuously missing from the claim. Hence, requiring clarification by objection.

Therefore, the objection to claim 2 is seen as proper and is maintained.

Further, Appellant's description via argument, of how the method step is performed, is acknowledged.

Support for Appellant's argument is clearly put forth on page 3, lns. 14-15 which explicitly recite "the desired grade of the cross slope sensor is measured and stored in memory of the tool's control system.

Finally, the rejections put forth in the last office action, appear to clearly teach it is known to mount gravity-based cross slope sensors onto screed heads, and to measure a desired grade using the screed mounted slope sensor. Specifically Burgin '937 explicitly recites in col. 3 "Slope sensors are often used on asphalt pavers, road graders, or on other types of construction equipment to automatically control an element of the machine for forming a surface having a desired slope (i.e., the inclination of the surface transverse of the direction of travel of the machine".

And that "with console 1 carried by element E of a machine and with the console connected to appropriate automatic controls for effecting a change of slope of the element in response to receiving a signal from the control console...and thus element E and case 5 are positioned at their predetermined slope. As the element moves along with the machine, any deviation of the element from its predetermined slope as may be occasioned by movement of the machine causes corresponding movement of the case and container 37 mounted for movement with the case...

This movement is sensed by sensor 23 causing an appropriate signal to be generated to effect movement of the element toward its desired slope".

Hence, it appears as though the prior art of record clearly discloses the method step of using a gravity-based cross slope sensor (23) mounted to a screed head (E), to measure a desired grade using the sensor in combination with and connected to the screed head, such that the sensor measures the slope of the screed head, to determine if the screed head is at the predetermined and desired cross slope orientation.

Therefore, the rejection appears to be proper and is upheld.

**Raymond Addie**
**Primary Examiner**
**Group 3600**

**7/10/06**

Appellant may file another reply brief in compliance with 37 CFR 41.41 within two months of the date of mailing of this supplemental examiner's answer. Extensions of time under 37 CFR 1.136(a) are not applicable to this two month time period. See 37 CFR 41.43(b)-(c).

A Technology Center Director or designee has approved this supplemental examiner's answer by signing below:

APPROVED BY
DONALD T. HAJEC
DIRECTOR, TECHNOLOGY CENTER 3600